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BOOK REVIEWS

Introduction to the Study of the Law of the Constitution. By A. V. DICEY. Eighth edition. (New York: The Macmillan Company. 1915. Pp. cv, 577.)

After thirty years of continuous service, after having long been accepted as a standard work on the English constitution, it would be gratuitous and unnecessary to attempt a new estimate of Dr. Dicey's *Introduction to the Study of the Law of the Constitution*. What is of significance in the eighth edition is that it contains a new introduction—an introduction of ninety closely printed pages—which is so valuable that the edition containing it must soon displace the older editions for students who would keep themselves abreast of constitutional usages and developments in England.

In this introduction Dr. Dicey compares with interesting detail the English constitution, as it stood in 1884 when the first edition of his book was written, with the constitution as it stood in the year that witnessed the outbreak of the great war. At the time the first edition was finding its way into the hands of students, the working classes in England were not yet in possession of the parliamentary franchise. Only a beginning had been made with the reform of procedure of the House of Commons. The organization and machinery of political parties was neither so extensive nor so complete as it had become in 1914. The nationalists were a small and separate group in the House of Commons; but it was 1906 before the independent labor party and the trade union labor party had any considerable and distinct representation at Westminster. The power of the House of Lords in 1884 was as unimpaired as it was in the decade that followed the reform act of 1832. Nomination boroughs still existed. The cabinet was not nearly so powerful as it had become by 1914. The era of indifference towards colonial possessions was drawing to a close. Canada was the only dominion; but the new era in the history of the empire—the era that began in England with official and popular recognition of the fact that representative and responsible government in the larger oversea possessions had proved itself a success—had not fully opened.

In surveying the effect of these changes Dr. Dicey restates the principle of parliamentary sovereignty as he presented it in the edition of 1885, and then indicates how the principle stands now that the parliament act of 1911—the lords' veto act—is law. His definition of parliamentary sovereignty is that parliament has "the right to make or unmake any law whatever; and further that no person or body is recognized by the law of England as having a right to override or set aside the legislation of parliament; and further than this right or power of parliament extends to every part of the king's dominions." "These doctrines," he adds, "appear in the first edition of this work; they have been repeated in each successive edition published up to the present day. Their truth has never been denied." Regarding the change in the doctrine due to the new and inferior position of the House of Lords, Dr. Dicey holds that sovereignty still resides in parliament; but that "the parliament act has greatly increased the share of sovereignty possessed by the House of Commons, and has greatly diminished the share thereof belonging to the House of Lords."

Nearly as important as the change in the position of the House of Lords is the altered position of parliament towards the oversea dominions—Canada, Australia, New Zealand, South Africa and Newfoundland. The imperial parliament claims today, as it did in 1884, absolute sovereignty throughout every part of the British empire. This claim extends to the dominions; but the omnipotence of parliament, though theoretically admitted, is today not applied in its full effect to the self-governing dominions. In stating the restrictions still applicable to the dominions, Dr. Dicey enumerates them in this order—parliament does not concede to any dominion or its legislature the right (1) to repeal any act of the imperial parliament applying to a dominion; (2) to make of its own authority a treaty with any foreign power; and (3) to stand neutral in the event of war between the king and any foreign power, or in general to receive any benefit from a foreign power which is not offered by such power to the whole of the British empire.

Dr. Dicey's note of the second of these restrictions, however, seems to overlook the fact that the dominions do make their own treaties of commerce, that these treaties, like the French-Canadian treaty of 1907, are negotiated by plenipotentiaries named by the dominion governments, furnished with credentials from the king-in-council. Moreover, Canada, under the treaty of 1907, enjoys advantages under the customs tariff of the republic of France that are not common to the other dominions.

By 1884 England had conceded to the colonies that are now dominions the management of their own internal affairs. Between 1848 and 1884 this had come to include (1) an executive dependent upon a majority in the popularly-elected chamber; (2) the right to enact protective tariffs without regard to the interests of British manufacturers; and (3) the right to make their own coastwise navigation laws. English statesmen, as Dr. Dicey states, intended in 1884 to retain for the parliament at Westminster, and the imperial government, a real and effective control over the action of the ministry and the legislature of each self-governing colony in so far as that control was not palpably inconsistent with independence as regarded the management of strictly local affairs. But the first quarter of a century of the new era in the history of the empire was a period of constitutional as well as material development in the dominions; and in 1914, the imperial policy of England was to grant to every dominion absolute, unfettered, and complete local autonomy in so far as such perfect self-government by a dominion does not clearly interfere with the loyalty of a dominion to the empire.

Taking Canada as an example, the newer and larger freedom thus described, is exemplified by the restrictions the dominion has imposed on oriental immigration; by its immigration code, under which undesirables from England, Scotland and Ireland are excluded; and by the power the dominion enjoys of negotiating and completing its own commercial treaties and conventions. In these thirty years, 1884-1914, a better understanding and a new spirit have developed in the dominions and the United Kingdom. A new public opinion in the mother country and in the dominions has been created, and a new and closer relationship established, of which the expression today is the whole-hearted coöperation of the dominions with England in the war with Germany, Austria and Turkey. Imperialism is the term applied to this new spirit and new opinion. Dr. Dicey's readers will welcome, and most of them will gladly accept, his definition of imperialism. It is the idea—the conviction—that "the British empire is an institution well worth maintaining, and this not on mere grounds of sentiment, but for definite and assignable reasons." "Upon England and upon every country subject to the king of England," continues Dr. Dicey, in amplifying his definition, "the British empire confers at least two benefits: It secures permanent peace among the inhabitants of the largest of existing states; it again secures, or ought to secure, to the whole of this vast community absolute protection against foreign attack."

Turning from imperial relations to developments within England itself from 1884 to 1914, Dr. Dicey notes and examines the reasons for the decline in reverence for law. He examines with some detail the tendency in legislation since 1906 to entrust judicial functions to civil servants who are neither lawyers nor judges; points out that much of the new work imposed by socialistic legislation on civil servants is business; and emphasizes a fact on which Judge Parry, an English county court judge, in his strikingly interesting book on *The Law and the Poor*,¹ lays much stress, that the courts are, in the nature of things, unsuited to the transaction of business. Judge Parry, who has had eighteen years' experience as a judge of the operation of the workmen's compensation act of 1896, regrets that the courts were ever brought into its working, for the act has been narrowed by judicial interpretations. These interpretations have created in the minds of the working classes a distrust of the judges, and helped towards the decline in reverence for rule of law, which is commented on by Dr. Dicey. Judge Parry insists that if England would recognize the law-making power of the judges, openly discuss it, and endeavor to define and limit it, "there would be less fear in the future of a rupture between the people and the judges when futurist laws of far-reaching social reform come to be administered by the courts." "The lamentable failure of consistent interpretation of the compensation acts," adds the author of *The Law and the Poor*, "is not calculated to raise the judiciary in the affections and respect of the working classes." Like Judge Parry, Dr. Dicey realizes that there is much business arising out of new legislation that need not go to the courts. The transaction of business, he maintains, is a very different thing from the giving of judgments; and he adds, "the more multifarious, therefore, become the affairs handed over to the management of civil servants, the greater will be the temptation, and often the necessity, of extending the discretionary powers given to officials, and thus preventing law courts from intervening in matters not suited for legal decision."

One of the valuable sections of the new introduction to the Law of the Constitution is that in which Dr. Dicey discusses the development since 1884 of new constitutional ideas. Political inventiveness, he insists, has in general fallen far short of the originality displayed in other fields than politics by citizens of progressive states; and in no part of English history, he recalls, was the tardy development of new

¹*The Law and the Poor*, by Judge Parry, Smith Elder and Co. 1914.

constitutional ideas more noteworthy than during the whole of the Victorian era. From 1837 to 1901 was an era which added little to the world's scanty store of political or constitutional ideas. The same remark, Dr. Dicey is convinced, applies in one sense to the years that have passed since the opening of the twentieth century; for woman suffrage, proportional representation, federalism and the referendum—the constitutional ideas he discusses in the introduction—are, he holds, for the most part not original. Their novelty consists in the new interest which during the last fourteen years they have come to command. Of most interest in this discussion is Dr. Dicey's statement of the case for and against federalism. New schemes for bringing the empire into closer and more intimate relations will assuredly be put forward and strongly pressed at the end of the war. The advocates of federalism as a solution of the problems that will then confront the empire will find no support for their theories in Dr. Dicey's detailed discussion of its possibilities and limitations as applicable to Great Britain and the oversea dominions. E. P.

Intervention and Colonization in Africa. By NORMAN DWIGHT HARRIS, with an introduction by James T. Shotwell. (Boston: Houghton Mifflin Company. 1914. Pp. xviii, 384.)

The close of the 19th century witnessed a remarkable revival of the spirit of imperialism. The foreign policies of the chief European states again took on the form of colonial rivalries and aggrandizement. In his recent work on *Intervention and Colonization in Africa*, Professor Harris has given us a most interesting description of one phase and perhaps the most important one, of this world-wide movement. The author has been singularly successful in bringing out the complex elements which have entered into the wild scramble for the partition of the unclaimed territories of that vast continent. The history of this movement is indeed a remarkable record of diplomatic intrigues, heroic explorations and administrative achievements and failures.

Professor Harris is able to enter into the spirit of this struggle with the greater zest as he is himself a thorough-going imperialist. He assumes the legitimacy of colonization almost without question. He is much more interested in the rivalries of the European powers than in the efforts of the native races to preserve their own soil and independence. He is, however, a benevolent imperialist. Although tempted at times to judge of the success of a colony too much from the